FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE,

NAGUR BENCH, NAGPUR.

DISTRICT:

Criminal Application No.1441/2005

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Office Note, Office Memoranda of Coram, appearance, Court's Orders or directors and registrar's orders

Court's or Judge's orders

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Coram : A.P.Lavande, J.
Dated : February 10, 2006

Heard Mr. Thengre, learned counsel for the applicant and Ms. Ramteke, Adv. holding for Mr. Narnaware, Adv. for respondent.

By this application, the applicant seeks leave to appeal under Section 378 (4) of Code of the Criminal Procedure against judgment and order of acquittal dated 11.4.2005 passed by the Judicial Magistrate First Class, Bramhapuri in Summary Criminal Case No.241/2003. The applicant filed the above case alleging offence under Section 138 of the Negotiable Instruments Act in respect of dishonour of cheque for an amount of Rs. 20,000/- issued by the respondent. Learned

Magistrate after considering the evidence led by the applicant acquitted the respondent on two grounds. Firstly, learned Magistrate held that there was no proper notice given by the applicant to the respondent as required under Section 138 of Negotiable Instruments Act and secondly, learned Magistrate held that Bramhapuri Court had no jurisdiction to deal with the complaint since no part of cause of action had arisen at Bramhapuri.

Mr. Thengre submitted that the applicant had given notice to the respondent demanding cheque amount of Rs. 20,000/- which had bounced. He further submitted that the Court at Bramhapuri had jurisdiction to entertain the complaint since the part of cause of action had arisen at Bramhapuri and since the complainant/applicant was residing at Bramhapuri.

Ms. Wasnik, learned counsel appearing for respondent supported impugned judgment and order.

I have considered the submissions made by the learned counsel appearing for respective parties. I have perused the impugned judgment and order. Learned counsel appearing for the applicant has made

available copy of the notice dated 27.3.2003 issued by the applicant to the respondent before filing of the complaint, for my perusal. Upon perusal of the said notice it is evident that there is no mention in the said notice that cheque issued by respondent has been returned “unpaid” and further in the said notice the applicant has not specifically called upon the respondent to pay the amount of the cheque which was returned unpaid. It is therefore, clear that the applicant had not complied with the predicates of Section 138 of Negotiable Instruments Act. Therefore, in my opinion, learned Magistrate was justified holding that in absence of any valid notice having been issued as required under Section 138 of the Negotiable Instruments Act to the respondent, the respondent was entitled to an acquittal. I find no perversity or illegality in the finding recorded by the Magistrate on this aspect. Insofar as the issue of jurisdiction is concerned, it is not necessary to go into the said issue since on the first ground itself the acquittal of the respondent cannot be faulted.

In view of the above, I do not find any merit in the application and as such the same is rejected. It is however, made it clear that the

applicant may seek recovery of the cheque amount by filing appropriate civil proceedings, if the same are permissible in law.

JUDGE

A.